

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON K. SCHEID
Claimant

VS.

ST. FRANCIS REGIONAL MEDICAL CENTER
Respondent
Self-Insured

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Docket No. 205,926

ORDER

Claimant appeals from a preliminary hearing Order of June 11, 1996, wherein Administrative Law Judge John D. Clark denied claimant benefits.

ISSUES

Claimant raises the following specific issues in her Amended Request for Review:

- "1. The specific issue of whether Claimant's injury arose out of and in the course of her employment remains.
- "2. The second issue is whether Judge Clark exceeded or failed to retain jurisdiction in his Order by finding that he was bound by the decision of the Appeals Board in denying all benefits, despite the Appeals Board decision in Knoblauch wherein the Board found that Judge Clark was not specifically bound by the Appeals Board Order on an Appeal from a Preliminary Hearing."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

In a preliminary hearing Order of December 21, 1995 Administrative Law Judge John D. Clark granted claimant benefits finding that her injury to her low back arose out of

and in the course of her employment with respondent. The issue, at that time, focused narrowly on the injury to claimant's low back. The respondent acknowledged that claimant had suffered injury to her right shoulder and neck on August 19, 1995.

After reviewing the evidence from that first appeal the Appeals Board, in its Order of February 26, 1996, reversed Judge Clark, finding that claimant had failed to prove by a preponderance of the credible evidence that her back injury stemmed from the August 19, 1995 accident. In claimant's January 29, 1996 letter to the Appeals Board, stemming from the original appeal, claimant alleged that she had complained to Holly White, her supervisor, about her back problems on August 24, 1995. Claimant also alleged that she had informed Ms. White that she had hurt her shoulder, neck and back on August 19, 1995. This was denied by the respondent.

The Appeals Board found in its Order of February 26, 1996, that claimant had failed to prove that the injury to her low back arose out of and in the course of her employment. In so finding, the Appeals Board specifically referred to the medical records of Dr. Gene Evans, the Employee's Report of Injury filled out by claimant on August 19, 1995, and an Unusual Occurrence Report also filled out on August 19, 1995, none of which mentioned claimant's low back.

At the recent preliminary hearing of June 11, 1996 claimant's counsel argued that the deposition of Holly Anna White, claimant's supervisor, taken on May 17, 1996, provided additional support for claimant's position that her low back injury arose out of her employment during the incident on August 19, 1995. The testimony provided by Ms. White does not support claimant's allegations. Ms. White acknowledged that claimant advised her of an injury, which testimony is supported by both the Employee's Report of Injury and the Unusual Occurrence Report. Ms. White denies any conversation with claimant regarding any injury to her low back. Ms. White goes on to say she has no personal recollection of what specific area of the body claimant discussed during their conversations.

This testimony from Ms. White is not supportive of claimant's contentions. Therefore, the Appeals Board reaffirms its original decision, which found claimant had failed to prove by a preponderance of the credible evidence that the injury to her low back arose out of and in the course of her employment.

The claimant also alleges that the Administrative Law Judge, in denying benefits, either exceeded or failed to retain jurisdiction in his Order, finding that he was bound by the original decision of the Appeals Board. A review of the preliminary hearing transcript indicates that Judge Clark was concerned regarding the prior Order of the Appeals Board. However, he acknowledges in his conversations on the record with counsel, that the Board has indicated from past opinions that parties can continue to litigate preliminary hearings. This appears to contradict claimant's allegation that the Administrative Law Judge blindly followed the earlier decision of the Appeals Board without considering the new evidence. It indicates that Judge Clark understands the parties' right to a preliminary hearing continues when new evidence is presented.

The Appeals Board notes that while the parties are not limited to only one preliminary hearing when dealing with litigated issues, it is, however, a waste of time when matters are litigated time and again before both the Administrative Law Judge and the

Appeals Board based upon the same evidence. Absent new and compelling evidence, there is no justification for issues to be relitigated.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated June 11, 1996, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director